

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.265 of 2016**

Arising Out of PS. Case No.-128 Year-2012 Thana- BODHGAYA District- Gaya

Rajendra Paswan @ Mauga, S/o Late Nanhak Paswan, R/v- Bodh Gaya
Harijan Colony, P.S.- Bodh Gaya, Distt- Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vijay Kumar Sinha, Advocate
For the Respondent/s : None

**CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
CAV JUDGMENT
Date : 03-08-2022**

By this appeal, appellant/convicted accused, Rajendra Paswan @ Mauga is challenging the Judgment and order dated 12.04.2016 passed by the learned 9th Additional Sessions Judge, Gaya in Sessions Trial No. 50 of 2016 between the parties, thereby convicting him of the offences punishable under Sections 376 and 323 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years apart from imposition of fine of Rs.5,000/- and default sentence of further rigorous imprisonment for two years for the offence punishable under Section 376 of the Indian Penal Code. He is sentenced to pay fine of Rs.500/- and in default to undergo imprisonment for seven days for the offence punishable under Section 323 of the Indian Penal Code. For the sake of



convenience, the appellant shall be referred to in his original capacity as “an accused”.

2. Facts leading to the prosecution of the accused projected from the police report can be summarized thus:-

A. First Informant- P.W. 6 Mr. R. (identity concealed) used to reside at village - Mohanpur under the jurisdiction of Nalanda Police Station along with his family members including his wife P.W. 1 Mrs. K. (identity concealed), son P.W. 7 Mr. K. (identity concealed) and the victim of the crime in question Ms. J. (identity concealed), who at the relevant time was aged about five years.

B. The incident allegedly took place on 24.05.2012. On that day, the accused enticed and took P.W. 4 Ms. J. to the newly constructed latrine at the S.T. Stand of the village. There he had committed forcible sexual intercourse with the victim female child. Thereafter the accused gave a coin of Rs.1/- to the victim for having eatables. The victim returned to her house and told her mother P.W. 1 Mrs. K. that she is suffering pain at her private part. Her mother checked and found that there was injury to the private part of the victim and blood was oozing from it. Upon being asked, the victim female child disclosed the incident to her mother P.W. 1 Mrs. K. Thereupon, P.W. 1 Mrs.



K. went to the accused who used to reside in the neighbourhood for questioning him. The accused then assaulted P.W. 1 Mrs. K. and had beaten her by pulling her hair.

C. After returning of P.W. 6 Mr. R. from work, he came to know about the incident of commission of rape on his minor daughter. He, therefore, went to the Police Station Bodh Gaya and lodged report against the accused which has resulted in registration of Crime No. 128 of 2012 for the offences punishable under Sections 376, 323 and 504 of the Indian Penal Code.

D. The victim female child was then sent to Prabhawati Hospital, Gaya, where P.W. 5 Dr. Punam Kumari had examined her. Statement of witnesses came to recorded and on completion of investigation, the accused came to be charge sheeted.

E. The learned trial court framed and explained the charges to the accused. He pleaded not guilty and claimed trial.

F. In order to bring home the guilt to the accused, the prosecution has examined in all nine witnesses. The defence of the accused was that of total denial. He however did not enter in the defeance.



3. After hearing the parties, by the impugned Judgment and order, the learned trial court was pleased to convict the accused and to sentence him as indicted in the opening para of this Judgment.

4. Heard the learned counsel for the appellant/accused. In his submission, the prosecution has failed to prove the guilt of the accused on the basis of evidence adduced by it. None appeared for the State.

5. I have carefully examined the record and proceedings and I have considered the submissions so advanced by the learned counsel for the appellant/accused.

6. The case in hand is that of commission of rape on the victim female child P.W. 4, Ms. J. By now, it is well settled that rape is a ghastly act which leaves the victim shattered for the life as it causes not only physical but emotional and psychological trauma to the victim. Sexual activities with young girls of immature age have a traumatic effect on them, which persists throughout the life of such victims. It is also well settled that the victim of offence of rape is not an accomplice, but she is the victim of lust of another person. Her evidence, therefore, stands on higher pedestal than the evidence of an injured witness. Therefore, if totality of circumstances emerging



on record discloses that the victim of such offence does not have any motive to falsely implicate the accused, then, it is absolutely not necessary to search for any corroboration to the evidence of the victim of such offence and the court is generally bound to accept version of such victim. Let us therefore examine whether the victim of the crime in question is a witness of truth and her testimony can be relied upon her for blessing the conviction.

7. P.W. 4 Ms. J, at the relevant time was stated to be a female child aged about five years. While in the witness box on 03.12.2014, she had disclosed her age as seven years. Therefore, the learned trial court had put some preliminary questions to her in order to ascertain her competency to depose and her understanding of questions which may put to her. The learned trial court was satisfied regarding the intellectual capacity of the victim female child and her ability to give rational answers to the questions put to her. That is how examination-in-chief of the victim commenced. It is in evidence of P.W. 4 Ms. J. that on the day of the incident, she was playing outside her house. The accused enticed her and took her beyond the boundary wall. Then as per version of Ms. J., the accused removed her panty and committed dirty act with her. Then the accused gave a coin of Rs. 1/- to her. She returned to her house



and disclosed the incident to her mother. The victim female child identified the accused in the dock as a person who had committed dirty act with her and who had given a coin of Rs.1/- to her. To test the veracity of her version, the victim female child was cross-examined. In her cross-examination it is brought on record that the accused used to reside in her neighbourhood and her father used to work as Rajmistri. She had stated that prior to the incident there was some quarrel between her parents and the accused over the issue of grazing of a cow. She further stated in her cross-examination that previously she had suffered injury because of iron rod of the compound and that was a bleeding injury. She was then taken by her parents to Biharsharif.

8. From this evidence of the victim of the crime in question, it is not possible to infer that she has been tutored to depose a lie against the accused. No suggestion to that effect was made to her. Sustaining of bleeding injury because of iron rod of the compound previously cannot be attributed to the incident of commission of rape on her by the accused. The cross-examination on this aspect is a halfhearted cross-examination. It was not suggested to the victim female child that she sustained bleeding injury to her private part because of the



iron rod of the compound. This reference in the cross-examination was to some other instance of sustaining wound by the victim of the crime in question. Hence it is not possible to doubt the version of the victim which is clear, cogent and consistent since beginning.

9. P.W. 5 Dr. Poonam Kumari was the Medical Officer of the Prabhawati Hospital, Gaya. She had examined P.W. 4 Ms. J. on 26.05.2012. As per version of this witness, upon internal examination of P.W. 4 Ms. J., she found that Ms. J. had suffered an abrasion over labia minro and two posterior commissure of size of 1/4" X 1/4" X skin deep. She further deposed that the victim was having a tear of vestibule together with hymenal tear extending from 8 O' clock to 11 O' clock position. Internal examination of this tiny tot was conducted by the Medical Officer under Anaesthesia. With this clinical finding, the Medical Officer had opined that P.W. 4 Ms. J. was subjected to rape. In cross-examination of P.W. 5 Dr. Poonam Kumari, it is brought on record that a hymenal tear can be caused by a pointed weapon or pointed nail. However it was not suggested to the victim of the crime in question that she had ever suffered an injury to her vagina by a pointed weapon or pointed nail. Hence it cannot be inferred that such injuries to the



victim was attributed to the same weapon or nail and not to the act of the accused. The injury to the private part of the victim as such was certainly due to the act of forcible sexual intercourse committed by the accused. Thus medical evidence certainly corroborates evidence of the victim of the crime in question.

10. P.W. 5 Dr. Poonam Kumari had while noting the general condition of P.W. 4 Ms. J. has noted that she was having height of 3' and 4.5" and was weighing 14 kgs. This finding of the Medical Officer coupled with the fact that the age stated by P.W. 4 Ms. J. while in the dock is not disputed by the accused, unerringly points out that the victim was minor female child at the time of the incident in question.

11. P.W. 1 Mrs. K. in her evidence has stated that on return of her daughter to the house, her daughter disclosed that she was suffering from pain at her private part. This mother checked the private part of the victim and found that there was injury to the vagina and blood was oozing there. P.W. 1 Mrs. K. has deposed about former statement of the victim i.e. P.W. 4 Ms. J. to the effect that the accused had committed rape on her after taking her to the newly constructed latrine of the S.T. Stand. This former statement of the victim made to her mother is certainly admissible under Section 157 of the Evidence Act and



is corroborating the evidence of the victim. There is nothing in cross-examination of P.W. 1 Mrs. K. to doubt her version. On the contrary, her cross-examination shows that she herself has noticed blood on the vagina as well as legs of her daughter.

12. P.W. 1 Mrs. K. has further deposed that when after hearing about the incident from her daughter she went to the accused to question him, the accused had assaulted her by pulling her hair. From her cross-examination it is seen that the incident of assault on her by the accused continued for sometime. Even in the evidence of this witness, nothing is there to doubt her version or possibility of false implication.

13. P.W. 6 Mr. R. has stated that after return to the house from work, he came to know about the incident and therefore, he lodged the report Ext. 2 against the accused with the police station.

14. P.W. 7 Mr. K. is brother of the victim. He has witnessed the fact that the accused had assaulted his mother. He has also spoken about former statement of the victim to the effect that the accused had committed rape on her. The said statement corroborates the version of the victim and is admissible under Section 157 of the Evidenced Act.

15. P.W. 8 Ashish Paswan who is resident of the



that locality had witnessed the quarrel between P.W. 1 Mrs. K. and the accused. P.W. 2 Musarina Khatoon and P.W. 3 Md. Javed have turned hostile to the prosecution. P.W. 9 Dev Bihari Sharan had proved his signature on the seizure list prepared by the Investigating Officer.

16. This is the evidence adduced by the prosecution in support of the charge against the accused. Evidence on record as discussed in forgoing para unerringly points out that the accused had committed forcible sexual intercourse with a minor female child P.W. 4 Ms. J. and thereafter he had assaulted mother of the victim namely P.W. 1 Mrs. K. Hence no infirmity can be found in the impugned Judgment and order. The appeal is devoid of merit and the same is accordingly dismissed.

(A. M. Badar, J)

Bhardwaj/-

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